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SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

State of Arizona,

Plaintiff,

vs.

James Arthur Ray,

Defendant.

CASE NO. V1300CR201080049

**DEFENDANT'S MOTION IN LIMINE
RE:**

**EXCLUDING VICTIM IMPACT
TESTIMONY**

Counsel for James Arthur Ray anticipates that the State will ask people close to the alleged victims to testify about the emotional distress their deaths caused in their lives. Counsel requests the Court preclude victim-impact testimony at the jury trial pursuant to Ariz. R. Evid. 401 and 402 because it is irrelevant to any issue at trial. Moreover, the prejudice to Mr. Ray would far outweigh any probative value thus precluding its introduction under Ariz. R. Evid. 403. Introduction of victim-impact testimony at trial would additionally jeopardize Mr. Ray's rights to due process and a fair trial under the United States and Arizona Constitutions.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Mr. Ray is on trial for manslaughter based on a theory he recklessly caused the
4 deaths of three alleged victims. The jury should decide the case based on evidence, not sympathy
5 for the victims or their families and friends. Testimony by the people close to the victims relating
6 to the emotional devastation caused by their deaths should be precluded at trial because it is
7 irrelevant to any fact bearing on whether Mr. Ray is guilty of manslaughter.
8

9 **II. ARGUMENT**

10 **A. Victim-impact testimony should be excluded because it is not relevant to**
11 **any material issue.**

12 Relevant evidence is defined as:

13 [E]vidence having any tendency to make the existence of any fact that is of
14 consequence to the determination of the action more probable or less
15 probable than it would be without the evidence.

16 Ariz. R. Evid. 401.

17 Relevancy thus is predicated on a relationship between the evidence and a fact that is "of
18 consequence to the determination of the action.' *Id.* The emotional impact of the victims' deaths
19 on their family and friends has no logical relationship to any of the facts at issue. The emotional
20 impact on family and friends does not in any way, however remote, alter the probability that Mr.
21 Ray recklessly caused their deaths in violation of Arizona law. Because such victim-impact
22 evidence has no tendency to prove or disprove any question that is actually contested, it is not
23 relevant and should be excluded. *See e.g.; State v Smith*, 136 Ariz. 273, 276, 665 P.2d 995, 998
24 (1983) (holding irrelevant evidence of murder victim's exemplary work habits, character and
25 family life); *Brown v Siate*, 757 S.W.2d 739 (Tex. Cr. App. 1988) (excluding as irrelevant
26 testimony on emotional impact of rape on victim).
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3 **B. Victim-impact testimony should be excluded because its prejudicial**
4 **impact far outweighs any possible probative value.**

5 Evidence, even though relevant, may nevertheless be excluded "if its probative value
6 is substantially outweighed by the danger of unfair prejudice . Ariz. R. Evid. 403. Victim-impact
7 testimony is inflammatory by its very nature. *State v. Beaty*, 158 Ariz. 232, 244, 762 P.2d 519.
8 531 (1988), *cert. denied*, 491 U.S. 910, 109 S.Ct. 3200, 105 LEd. 2d 708(1989). Even if victim-
9 impact testimony were to have some remote probative value at trial, its prejudicial impact would
10 significantly outweigh any probative value. Victim-impact testimony inevitably arouses the
11 sympathy of the jury and tends to impair its objectivity and its ability to fairly evaluate the
12 innocence or guilt of the accused. *Cf.*, *State v. Chapple*, 135 Ariz. 281, 290, 660 P.2d 1208,]217
13 (1983) (excluding photographs whose only possible use "would have been to inflame the minds
14 of the jury or to impair their objectivity"). Victim-impact testimony therefore should be
15 excluded under Ariz. R. Evid. 403.
16

17 The introduction of victim-impact testimony would additionally violate Mr. Ray's
18 rights to due process and a fair trial under the United States and Arizona Constitutions. Mr. Ray
19 has a right to be tried before an unbiased jury solely on evidence relating to the issue of
20 innocence or guilt of the charged crime. *Cf. Darden v. Wainwright*, 477 U.S. 168, 179-83, 106
21 S.Ct. 2464, 2470-7~ 91 L.Ed.2d 144 (holding due process standard of fundamental fairness
22 governs prosecutor's closing argument). Introduction of irrelevant, inflammatory evidence at
23 trial violates this right by creating an impermissible risk that the jury will reach a decision of
24 guilt in an arbitrary manner.
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1 **III. CONCLUSION**

2 Mr. Ray anticipates that the State will seek to elicit testimony on the emotional
3 distress on family and friends resulting from the deaths of the alleged victims. This Court should
4 exclude such testimony as irrelevant, unduly prejudicial, and a violation of Mr. Ray's
5 constitutional rights.
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8 DATED: December 23, 2010

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12 By: 
13
14 Attorneys for Defendant James Arthur Ray

15 COPY of the foregoing
16 mailed/faxed/delivered this
17 23rd day of December, 2010 to:

18 Honorable Warren R. Darrow
19 Pro Tem B
20 Yavapai County Superior Court
Verde Valley Judicial District
Camp Verde, AZ

21 Sheila Polk
22 Yavapai County Attorney
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